IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.473 OF 2007

1. Shri Kishin Naraindas Daryani,)
   Aged about 62 years, Occ: Nil,)
   R/o. Rohit Classics, Nanik Society,)
   Kondwa, Pune-48, District Pune.)

2. Shri Purshottam Thakurdas Mulrajani,)
   Aged about 61 years, Occ: Nil,)
   R/o. Kesabai Apartments,)
   Near 24-C, Primary School,)
   Ulhasnagar-1, District Thane.)

3. Shri Vijay Kotumal Butani,)
   Aged 58 years, Occ: Nil,)
   Ulhasnagar-1, District Thane.)..Appellants

Versus

1. Shri Pessumal Chimandas Valeja,)
   Aged about 67 years,)
   R/o. Block No.A-34/202, Gol Maidan,)
   Ulhasnagar 421 001.)

2. Shri Haresh Pessumal Valja,)
   Aged about 47 years,)
   R/o. Flat No.8B, Ram Shyam Society,)
   Near Aman Talkies, Ulhasnagar-1.)

3. Shri Suresh Pessumal Valeja,)
   Aged about 42 years,)
   R/o.Block No.A/33/202, Gol Maidan,)
   Ulhasnagar-1.)

4. Smt Poonam Inderlal Bulani,)
   Aged about 45 years,)
   R/o.Flat No.5-6, 1st Floor,)
   Near Ajanta Apartment,)
   Ulhasnagar-3.)

5. Smt Manju w/o.Kehraj Gianamani,)
   Aged about 37 years,)
   R/o.401, Kala Mandir Apartment,)
   Ulhasnagar-5.)

6. Smt Dipika Jagdish Someja,)
   Aged about 37 years,)
   R/o. Flat No.501, Sherwali Apartment,)
   Ulhasnagar-3.)

(The legal heirs of Smt Nirmala Pessumal)
Valeja-original Plaintiff.))

7. M/s.V.P.Builders,)
Office at Chand Apartments,)
Goal Maidan, Ulhasnagar-1,)
District Thane.)

8. Ulhasnagar Municipal Council/)
Corporation, Ulhasnagar-3.)..Respondents

Shri G.S.Gobdole with Shri J.S.Chandnani for the Appellants.

Shri J.M.Puranik for the Respondent Nos.1 to 6.

Shri Vijay Patil for the Respondent No.8.

CORAM : ABHAY S.OKA, J.

DATE ON WHICH SUBMISSIONS ARE HEARD. : JUNE 29, 2007.

DATE ON WHICH JUDGMENT IS PRONOUNCED. : JULY 20, 2007.

JUDGMENT:

1. I have extensively heard the submissions of the learned counsel appearing for the Appellants on 28th and 29th June, 2007. The Appellants have been directed to be imprisoned in civil prison for a period of one month by the learned Adhoc Additional District Judge by exercising the powers under Rule 2A of Order 39 of the Code of Civil Procedure, 1908 (hereinafter referred to as the said Code). The said Court has held that the Appellants are guilty of committing a deliberate breach of order of temporary injunction

passed by the District Court on 29th October, 1988.

2. It will be necessary to refer to facts of the case in brief. The first Respondent is the original Plaintiff who filed Regular Civil Suit NO.189 of 1988 against the Appellants and the seventh Respondent for declaration and injunction. The case made out in the suit is that the Appellants and the seventh Respondent started construction of a building known as Palli Hill Apartment in violation of provisions of law. It is alleged that the construction proceeded without leaving requisite open space as required by law. The suit was filed on an apprehension that the Appellants and seventh Respondent were intending to construct a seven storied building in contravention of the relevant Development Control Regulations. In the said suit an Application for temporary injunction was filed by the first Respondent. The said Application was rejected by the trial Court. Being aggrieved by the rejection of the said Application, the first Respondent preferred Misc. Civil Appeal No.207 of 1988 in the District Court at Thane. By Judgment and Order dated 29th October, 1988 the learned 5th Additional District Judge, Thane allowed an Application for temporary injunction in the Appeal and the Appellants and the seventh Respondent herein were

restrained from proceeding with the construction of building on the site of the Room Nos.197 to 201, Block Nos.A-33 and A-34 at Ulhasnagar, Taluka Ulhasnagar, District Thane. An injunction was granted restraining the Appellants from extending the building horizontally and vertically till the disposal of the Appeal. The Appellants were also restrained from creating third party interests. The learned Additional District Judge directed the Appellants to file an affidavit setting out the status of construction as it existed on 30th October, 1988.

3. In compliance with the said direction to file an Affidavit, on 2nd November 1988 an Affidavit was filed on behalf of the Respondents in the said Appeal by the Appellant No.2 herein Shri Purshottam Thakurdas. In the said Affidavit it is stated as under :

> "2. I say that the Hon’ble Court was pleased to allow the injunction application filed by the appellant partially and have directed us restraining us from making any additional construction laterally as well as vertically.

3. **I and partners have noted the order.** In the said order the Hon'ble Court has been pleased to direct us to file an affidavit and place on record the present position of the structure.

4. I say that in the building there are two parts, A and B. A part on the northern side to room No.196 of Block-1 A-32 and B part is near the No.202 belonging to the appellant. **In the B portion, 5 floor of R.C.C. work is over and on 2nd floor ground and 1st brick work is nearly over. The brick work in upper 3 floors was taken up when the injunction order has been brought to our notice. On the A side 3 slabs are put. Brick work on ground floor was over and brick work on second floor was nearly on completion."** (Emphasis supplied)

4. The Additional District Judge, Thane appointed a practicing Advocate as a Court Commissioner who visited the property on 15th November 1988. He has

submitted an interim report. In the said report he observed that he was obstructed by the Appellants. In the report he stated that:

> "a) That **on 15-11-1988 the construction of the building was going on.**
>
> b) In the North portion three slabs were completed and on Southern portion three slabs work was completed as for the 4th slab centering was done.
>
> c) On the first floor brick work was in progress and in some portions plastering work was being done.
>
> d) In the ground floor in the North Part, brick work is done and on Southern side, brick work of half wall was done and the labourers were doing the work." (Emphasis supplied)

5. An application was made on 19th April 1991 by the Respondent No.1 at Exh.74 under rule 2A of Order XXXIX of the said Code in the said pending Appeal. In the said application it was asserted that

notwithstanding the order of temporary injunction granted by the Court, the Appellants and the Respondent No.7 proceeded with construction and they completed six floors in each part of the building and construction of all the floors was completed in all respects. It is alleged that after the date of passing of order of temporary injunction, the Appellants and the Respondent No.7 entered into the various agreements for sale of the flats in the building on the dates specified in the application. Accordingly, Respondent No.1 prayed for taking action against concerned Respondents for committing gross breach of temporary injunction.

6. A reply was filed by the Appellants and Respondent No.7 to the Application at Exh.74. One of the contentions raised in the reply was that Respondent No.7 M/s. V.P.Builders has not developed the property and Appellants herein were not the partners of the said firm. It is contended that the Appellants are the partners of M/s. Perfect Builders and the said firm has developed the property. It is contended in the reply that the construction carried out is as per the approved plan of construction and there is no breach on their part.

7. In the year 1996, a Court of Additional District Judge, Thane started sitting in a Camp at Kalyan which is a Taluka place in Thane District. In September 1996, a regular Court of Additional District Judge, Kalyan was established under a notification issued under the Bombay Civil Courts Act,1869. It is not in dispute that pending Appeal in which order of injunction was passed was transferred initially to the Court of Additional District Judge, Thane, having a Camp at Kalyan and later on to the newly established Court of the Additional District Judge, Kalyan.

8. It appears that the Appellants did not attend to the proceedings after the transfer of the said Appeal to Kalyan. On 11th October 2004 the learned Additional District Judge directed the Respondent No.8-Corporation to submit an Affidavit on factual aspects of the construction carried out on the suit property. Accordingly, an Affidavit was filed by a Deputy Commissioner of Respondent No.8-the Ulhasnagar Corporation stating therein that a building consisting of basement plus ground floor and six upper floors is constructed in violation and in contravention of building permission. It is stated that about 48 flats were constructed in excess of available Floor Space Index (FSI) and no completion certificate or

occupation certificate is obtained either from the Respondent No.8-Corporation or from the erstwhile Municipal Council. It is an admitted position that when the application at Exh.74 was heard, the Appellants and Respondent No.7 were absent. After considering the entire material on record the learned Additional District Judge found that there was a gross breach of order granting temporary injunction committed by the Appellants by carrying out the construction and by creating third party interests in respect of the flats in building.

9. The Application at Exhibit 74 was allowed by order dated 17th January, 2005. A direction was also issued by the learned 3rd Adhoc Additional District Judge, Kalyan that the Appellant shall be detained in civil prison for a period of one month. An order of attachment of property of the Appellants was also passed by the learned Judge. A direction was issued to the Municipal Corporation to demolish the construction of the building and to submit a compliance report.

10. The Appellants preferred an Appeal from Order No.172 of 2995 in this Court for challenging the aforesaid order. The said Appeal from Order was

disposed of by order dated 09th March, 2005. This Court referred to various affidavits filed by the parties. In paragraph No.18 of the said judgment, this Court observed as under:

> "18. It is to be noted here that even in the Affidavit dated 23rd February 2005 filed in this Court by the Appellant No.2, it is not disputed that the construction of the building has been completed and that the flats are occupied by the flat purchasers. It is stated in the said Affidavit that a period of 16 years has passed from the completion of the construction of the building. It is not disputed that the flats in the building have been sold and profit has been earned. In fact the Appellants have volunteered to cooperate with he flat purchasers for getting the building regularized. **There is no challenge in this Appeal from Order to the fact that after the order of injunction was passed construction of the building has been completed. Affidavit filed on behalf of Respondent No.8-Corporation discloses that the construction of the building of basement plus ground and six upper floors has been completed**

> **in gross violation of the rules relating to F.S.I. as well as in violation of the development plan. It is stated that in the original sanctioned plan provision was made only for eight flats having total F.S.I. of 495.25 sq.mtr. In the sanctioned plan there is no provision for construction of third and upper floors and for construction of 12 flats on each floor. It is stated that 48 flats have been constructed in violation of rules relating to F.S.I. The Affidavit notes that the substantial part of the building is completely unauthorised and that no occupation or completion certificate has been issued**".(Emphasis supplied)

11. This Court recorded a finding that after the order of injunction was passed, the Appellants completed the construction by constructing atleast 48 flats and the construction to the extent of 48 flats was completely unauthorised. This Court held that the purchasers were put in possession of the flats long after the order of temporary injunction was passed. This Court held that the material on record clearly establishes that the construction of the building was continued and completed after the order of injunction

was passed. This Court also held that after the order of injunction was passed, the Appellants executed various agreements for sale in respect of the flats in the building. Thus, a categorical finding was recorded by this Court that in breach of order of temporary injunction, the Appellants proceeded to complete the construction of the building and also executed agreements for sale in favour of flat purchasers. This Court specifically held that the purchasers of 48 flats were put in possession after the order of temporary injunction was passed. The said order of this Court notes that the Appellants deposited a sum of Rs.05,00,000/- in this Court. This Court by setting aside the order dated 17th January, 2005 passed an order of remand for a limited purpose of considering the contention of the Appellants that the breach of the order passed by the District Court on their part was neither deliberate nor wilful. The Appellants were permitted to lead evidence on the said aspect and also on the affidavit of the Deputy Commissioner of the Kalyan Municipal Corporation filed in this Court. This Court set aside the direction given to the Kalyan Municipal Corporation to demolish the structure. The amount of Rs.05,00,000/- deposited by the Appellants was ordered to be transferred to the Court of the Additional District Judge at Kalyan. The

said Court was directed to pass the appropriate order as regards disbursement and/ or investment and/ or refund of sum of Rs.05,00,000/- deposited by the Appellants. The said order passed by this Court has attained finality. After the order of remand, the learned 3rd Adhoc Additional District Judge passed an order dated 30th December, 2005 directing detention of the Appellants in civil prison for a period of one month. The order of attachment of the property of the Appellants was also passed. The Appellants preferred an Appeal from Order No.104 of 2006 against the said order. The Appeal from Order was disposed of by order dated 10th August, 2006. This Court found that the direction issued by this Court while passing the earlier order of remand was not properly complied with. This Court in paragraph Nos.9 and 10 observed thus:

> "9. All these aspects will have to be considered by the Court of first instance, which is required to pass either order of attachment or order of detention of the person in civil imprisonment of Court. If the Court of first instance passes both the orders of attachment as well as detention of civil

imprisonment, it will have to record reasons therefore. This is so because it is also open to the Court to pass either order of attachment of the property to be sold and compensate the injured party out of the sale proceeds or direct detention of the civil imprisonment for a term not exceeding three months.

10. **Thus understood, while confirming the finding of guilt recorded by the Court below, the impugned order is set aside and parties are relegated before the lower Court for considering above aspects and give opportunity to the Appellants to be heard on the point of sentence and then proceed to record reasons for the nature of order that it proposes to pass**. The Court below will consider all aspects relevant for the purpose of final order to be passed on its own merits in accordance with law". (Emphasis supplied)

12. Thus while passing the first order of remand,

this Court categorically held that there was a breach committed by the Appellants of the order of injunction. The remand was limited for considering the question whether the breach was deliberate. While passing the aforesaid second order of remand, this Court confirmed the finding of guilt and the remand was restricted for determination of punishment. After the second order of remand was passed by this Court, by an order dated 26th September, 2006 the learned Adhoc Additional District Court, Kalyan disposed of the Application at Exhibit 74 by directing the detention of the Appellants in the Civil prison and also by ordering attachment of the disputed building as well as other immovable properties belonging to the Appellants. The Appellants applied for review of the said Judgment before the same Court. The said Application was rejected by order dated 23rd April, 2007.

13. Shri Godbole appearing for the Appellants has made extensive submissions. He pointed out that under the orders of this Court passed in Appeal From Order No.172 of 2005, the Appellants have deposited Rs.5,00,000/- and there is no order of refund of the said amount passed by the impugned order. He submitted that the deposit of the said amount was

certainly a mitigating circumstance. He submitted that in view of the deposit of the said amount, the Court should not have punished the Appellants by sending them to civil prison. He invited my attention to the observations made by this Court while disposing of Appeal from Order No.104 of 2006. He submitted that the Court ought to have considered whether sum of Rs.5,00,000/- was sufficient in lieu of attachment of the property and the said amount could have been used for disbursing the same to the persons who have suffered injury due to the illegal construction. He submitted that this was not a case where both the detention in civil prison as well as attachment of the property could have been ordered by the court below. He submitted that even assuming without admitting that there is any deliberate breach on the part of the Appellants, the Court could have directed sale of the property of the Appellants and disbursement of the sale proceeds to the injured parties. He submitted that the State Government has now promulgated an ordinance which provides for regularisation of unauthorised structures in the city of Ulhasnagar. He submitted that under the ordinance certain amount is payable for regularisation of unauthorised structures. He states that the Appellants are ready and willing to pay the amount necessary and requisite for

regularisation of the building. He submitted that in view of the said legislation now the structure is bound to be regularised and there will be no prejudice to the flat purchasers. He submitted that considering all the aforesaid aspects the order of detention in civil prison is harsh and disproportionated which requires to be set aside. He submitted that no reasons have been assigned by the learned Judge for passing an order of detention as well as of attachment of the properties of the Appellants. He submitted that the learned Judge was duty bound to record reasons in that behalf in view of the earlier order of this Court. He also pointed out that separate affidavits have been filed in this Court by the Appellants in which they have prayed for taking a lenient and sympathetic view of the matter.

14. I have carefully considered the submissions. As stated earlier, the finding recorded by this court in Appeal from Order 172 of 2005 that the Appellants have committed a breach of the order of temporary injunction passed on 29th October, 1988 has attained finality. The order of remand passed on 09th March, 2005 was for consideration of two aspects: (1) Whether the breach is deliberate or wilful? and (2) In what manner the Appellants should be penalised if

answer to the first question is in the affirmative. While passing second order of remand on 10th August, 2006, this Court confirmed the finding of guilt and remand was confined to determination of sentence or penalty.

15. It will be necessary to refer to the order of the temporary injunction dated 29th October, 1988 passed by the District Court of which breach has been committed by the Appellants. In paragraph No.28 of the said order, the District Court has observed as under:

> "28. ...If injunction is not issued the respondents would proceed with the construction of buildings in question. They would ultimately hand over possession of concerned blocks to purchasers and purchasers would occupy them. **Thereafter, it would be extremely difficult for the plaintiff-appellant to get status-quo ante restored. The damage done to environment may not be undone atleast for a lifetime during which the parties would be fighting through various**

> **courts. At this stage, the appellants have apparently established an arguable case against the order of the Trial Judge. If injunction is refused, the appeal itself may become infructuous by completion of building in question and their occupation by purchasers...."**
> (Emphasis supplied)

16. As pointed out earlier, the order of injunction specifically restrained the Appellants from proceeding with the construction of building on the suit property by extending it either horizontally or vertically till the decision of the Appeal. The Appellants were also restrained from creating any third party interests in respect of the construction. It is pertinent to note that the Appellants were directed by the District Court to file an affidavit setting out the stage of construction as it existed on 30th October, 1988. Accordingly, the second Appellant filed an affidavit on 02nd November, 1988. It is pertinent to note that the second Appellant has filed the said affidavit on behalf of himself and other Appellants. In the said affidavit the second Appellant stated that he himself and the partners of the Respondent No.7 have noted the order of the Court. In the said affidavit he has set

out that in part "B" of the building R.C.C work of five floors was over and brick work upto second floor was nearly over and when the injunction order was passed, the brick work of the third floor was in progress. He has stated that in part "A" of the building, three R.C.C slabs have been constructed and the brick work of second floor was nearly in completion. The Court Commissioner appointed by the District Court visited the property on 15th November, 1988. In his report he has observed that at the time of his visit he found that the construction work was in progress. Infact he recorded that he was obstructed by the Appellants.

17. It is pertinent to note that to the Application at Exhibit 74 under Rule 2A or Order XXXIX of the said Code on which impugned order has been passed, the Appellants filed a reply contending that the seventh Respondent M/s. V.P.Builders have not developed the property and the Appellants were not the partners of the seventh Respondent. It was contended that construction was carried out by M/s.Perfect Builders and the Appellants were partners of M/s.Perfect Builders. Infact a stand was taken that the construction carried out is in accordance with a sanctioned plan. Infact a specific stand was taken by

the Appellants by way of reply to Application at Exhibit 74 that they were the partners of M/s.Perfect Builders and therefore any prohibitory order against the Respondent No.7 (M/s.V.P.Builders) was not binding on them. It is pertinent to note that the Appeal from Order No.172 of 2005 was decided on 09th March, 2005. This Court recorded a categorical finding that breach of order of temporary injunction on the part of the Appellants has been established. The order of remand passed by the said order was for limited purpose of considering the contention of the Appellants that the breach was not deliberate or wilful. After the order of remand was passed, on 29th September, 2005 an affidavit was filed by the second Appellant for himself and on behalf of other two Appellants. In paragraph No.5 the second Appellant has stated thus:

> "It is utterly false that inspite of the injunction order the respondents continued the construction work".

In paragraph No.3 of the said affidavit, the second Appellant reiterated that the Appellants were not the partners of M/s.V.P.Builders. In the said affidavit the second Appellant has gone to the extent of stating that affidavit dated 02nd November, 1988 filed by him

in the pending Appeal was not on behalf of M/s.V.P.Builders but it was on behalf of M/s.Perfect Builders. In paragraph No.8 of the said affidavit dated 29th September, 2005 the Appellant No.2 stated that the Appellants have not carried out construction either horizontally or vertically. After a categorical finding of this Court that the Appellants have carried out construction in breach of order of temporary injunction, such a stand was taken by the second Appellant on oath. Only a limited inquiry was contemplated after the remand as to whether the breach on the part of the Appellants was deliberate or wilful. Notwithstanding the order of this Court and a categorical finding referred to above, the Appellants have made a statement on oath before the Appellate Court that they have not committed any breach. After the second remand was made by this Court under the order dated 10th August, 2006, the first Appellant has filed an affidavit dated 08th September, 2006 before the Appellate Court. In the said affidavit, a stand has been taken on oath that "But there was misunderstanding and misconception of respondent and respondent and myself was in opinion that injunction order is against M/s.V.P.Builders and its partners being the respondent No.1 to 4". The same stand has been taken by the third Appellant in the affidavit

filed on the same day.

18. It must be stated here that the breach as found by this Court in order dated 09th March, 2005 is not only to the extent of proceeding with the construction. On the basis of affidavit of the Deputy Commissioner of the Municipal Corporation this Court found that the plan sanctioned by the local authority was in respect of only eight flats. The Deputy Commissioner of the Corporation stated that 48 flats have been unauthorizedly constructed by the Appellants. Thus, a finding is recorded by this Court that 48 flats were unauthorizedly constructed without permission and in breach of an order of prohibitory injunction. It must be noted here that the building consists of basement, ground plus six upper floors. In the report of the Commissioner appointed by the District Court it is stated that as on 15th November, 1988 slabs above the third floor of ‘A’ Wing were not constructed. Therefore, after the order of injunction was passed not only that three upper floors were constructed but the brick work and other finishing work of all the floors was completed. Not only that the work was completed, but third party interests were created and that the flat purchasers have been placed in possession of all the flats obviously without

obtaining occupation certificate. In the affidavit filed by the second Appellant on 23rd February, 2005 it is contended that in the year 1988 the frame work of the building was already put up but finishing work was done subsequently and the work was completed. It is not at all the case of the Appellants that when order of injunction was passed in the year 1988 they had already created third party interests in respect of the flats. Thus, the breach of injunction extends even to creation of third party interests.

19. At no stage the Appellants challenged the order of injunction and infact in compliance with the order granting temporary injunction, the second Appellant filed an affidavit on 02nd November, 1988 before the District Court. Therefore, this is not a case of a simple or a trifle breach of the order. This is a case of a flagrant and a gross violation of order of temporary injunction passed by the District Court. The magnitude of the breach is reflected from the fact that 48 flats were constructed unathorisedly and illegally and after creating third party interests, the purchasers were put in possession. Apart from the fact that it is in gross breach of order of temporary injunction, the construction is patently unauthorised and illegal and in gross violation of rules relating

to F.S.I. It must be also noted that this is not a case of breach of an ad-interim order of temporary injunction. The Application for temporary injunction was seriously contested in the District Court and the said aspect is apparent from the fact that the District Court has delivered a judgment running into 31 pages. When the District Court passed order of temporary injunction on 29th October, 1988, the Court was aware of consequences of not granting injunction. In paragraph No.28 of the order the learned Additional District Judge has stated thus:

> "If injunction is not issued the respondents would proceed with the construction of buildings in question. They would ultimately hand over possession of concerned blocks to purchasers and purchasers would occupy them. Thereafter, it would be extremely difficult for the plaintiff-appellant to get status-quo ante restored. The damage done to environment may not be undone atleast for a lifetime during which the parties would be fighting through various Courts. At this stage, the appellants have apparently established an arguable case against the order of the trial judge. If injunction is refused, the appeal

itself may become unfructuous by completion of buildings in question and their occupation by purchasers".

What was sought to be avoided by granting temporary injunction has been precisely done by the Appellants.

19. I had adjourned hearing of the Appeal to enable the Appellants to make a statement whether they are in position to compensate each and every flat purchaser by depositing the requisite amount in the Court. A suggestion was given that the Appellant should deposit the market value of 48 flats as of the year 1991 when Application at Exhibit 74 was filed so that in case the construction of the building is not regularised as per the ordinance, a reasonable amount can be paid to the flat purchasers. It was suggested that in case a sufficient amount to compensate all the flat purchasers is deposited, leniency can be shown in respect of sentence of imprisonment. The learned counsel for the Appellants on instructions of the Appellants stated that they are not in position to deposit the amount as suggested by this Court. Infact an offer was made to deposit only a further amount of Rs.03,00,000/- in addition to sum of Rs.05,00,000/- deposited earlier. This amount will not be sufficient

to compensate even 4 or 5 flat purchasers.

20. Considering the earlier orders of this Court and the facts of the case, in my view, this is a case of deliberate, wilful and flagrant breach of order of injunction passed by the Court of law. Whether the building will be regularised or not is altogether a different question. Here is a case where the Appellants have shown complete disregard to the order of injunction of this Court and has committed a flagrant breach of the magnitude which is indicated in the earlier part of the judgment. By no stretch of imagination argument made by the Appellants that the breach is neither deliberate nor wilful can be accepted. Considering the nature of breach committed by the Appellants, this is not a case where a lenient view can be taken. There is no ground to show any sympathy.

21. Rule 2A of Order XXXIX reads thus:

> "**R.2A. Consequence of disobedience or breach of injunction.**-(1) In case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms in which the injunction was granted or

> the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months unless in the meantime the Court directs his release.
>
> (2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto".

22. On plain reading of the said Rule it is obvious that the Court has a power to attach the property of the person guilty and also to order that such person should be detained in civil prison. In the present case, considering the magnitude of the breach it is obvious that for upholding the dignity of the Court of law, an order of detention has to be passed. Such

litigants must be penalised. Not only that they have violated the order of injunction but they have earned a substantial amount by sale of large number of flats which were constructed after the order of injunction was passed. Infact, law permits detention upto three months. However, the Court below has taken a liberal view and has directed imprisonment only for one month. Infact, there could not have been a better case where a maximum punishment of three months should have been awarded.

23. In the present case the Appellants obviously cannot purge the contempt by demolishing the building as the building is already occupied by the third parties. The object of attachment under rule 2A of Order XXXIX is that in case the disobedience or breach is continued or is not rectified, the property of the wrong doer which is attached can be sold and out of the sale proceeds, the Court can award such compensation as it thinks fits to the injured party. In the present case a sum of Rs.05,00,000/- is already deposited by the Appellants. The pending Appeal and suit filed by the first Respondent are yet to be heard. The sum of Rs.05,00,000/- is available with the Court to award compensation to the injured party. As of today the order of payment of compensation

cannot be passed as it is not clear whether the construction can be regularised under the ordinance promulgated by the State Government. As the sum of Rs.05,00,000/- deposited by the Appellant is pending, it will not be necessary to attach property of the Appellants. Hence, only to that extent the order impugned will have to be modified.

24. Hence, I pass the following order:

(i) The impugned order dated 6th September, 2006 is confirmed subject to modification that the order of attachment of the disputed building standing on the site of Room No.197 to 201, Block No.A-33 and A-34, Ulhasnagar and all other immovable properties of the Appellants stands set aside.

(ii) The Appellate Court will pass appropriate order regarding disbursement/withdrawal/payment of sum of Rs.05,00,000/- deposited by the Appellants. The said order shall be passed at the time of final disposal of Misc. Civil Appeal No.01 of 1996.

(iii) The Misc. Civil Appeal No.01 of 1996 shall be

heard and decided as expeditiously as possible and preferably on or before 31st January, 2008.

(iv) If the sum of Rs.05,00,000/- deposited by the Appellants is not yet invested, the same shall be invested by the Appellate Court in fixed deposit in any nationalised bank. The fixed deposit shall be renewed till the disposal of the pending Appeal.

(v) The Appeal is partly allowed in above terms.

JUDGE

. The learned counsel appearing for the Appellants prays that the order of detention of the Appellants in civil prison may be stayed. None appears for the contesting Respondents.

. Order of detention of the Appellants will remain stayed for a period of eight weeks from today.

JUDGE